

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made as of the 29th day of March, 2006 by Symmes Redevelopment Associates, LLC ("SRA") and Sarah Lusk, Greg Jackmaugh, Lorelei Kolegue, Sandi Bourgeois, and Andrew Fischer. (collectively "Plaintiffs").

WHEREAS the Arlington Redevelopment Board ("ARB") granted a Special Permit, dated September 12, 2005 and filed with the Arlington Town Clerk on September 20, 2005, to SRA authorizing the construction of up to 245 residential units ("Project") on portions of the former Symmes Hospital Site in Arlington, Massachusetts; and

WHEREAS Sarah Lusk filed Land Court Miscellaneous Action No. 314243 ("Lusk Appeal") on or about October 7, 2005 challenging the Special Permit pursuant to G.L. c.40A, § 17; and

1.

WHEREAS Greg Jackmaugh, Lorelei Kolegue, and Sandi Bourgeois filed a separate action in the Middlesex Superior Court, Civil Action No. 05-3569 ("Jackmaugh Appeal"), on or about October 7, 2005 challenging the Special Permit pursuant to G.L. c.40A, § 17; and

WHEREAS SRA and the Plaintiffs have met several times during the past three months to discuss and to resolve their disagreements concerning the proposed 245-unit residential development; to identify mutually beneficial solutions to the planning and construction of the Project; to coordinate potential solutions in a manner that would achieve the various parties' respective overall objectives for the Project; and to attempt to settle the pending legal appeals;

WHEREAS SRA and the Plaintiffs desire to resolve their disputes by entering into this Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties hereto, the parties agree as follows:

- I. Reduction in Density, Height, and Massing: SRA shall reduce the size and scale of the Project by submitting to the ARB, at the 50% and 100% completion stages required by General Condition No. 2 of the Special Permit, construction plans that incorporate the following modifications and adjustments:
  - A. Mid-Rise Building 3 Reduction: Within the approximate lateral and vertical envelope of the Permitted Plans, SRA shall:
    1. Lower the tallest point of the building, as measured from the top of the mechanical equipment, approximately 33 feet. This reduction is illustrated in Exhibits ("Ex.") A-1 and B. As indicated in Ex. A-1, the Permitted Plans allow the top of the mechanical equipment to reach an elevation of approximately 94 feet with the roof peak at 90 feet. After the reduction, the top of the mechanical equipment will be at an elevation of approximately 61 feet and the roof peak will be at 58 feet. The Town of Arlington Zoning By-Law as currently in effect ("By-

Law”) does not include rooftop mechanical equipment in determining height elevations, nor does it include screening in the calculation. Instead, the By-Law measures to the roof peak. Pursuant to the By-Law’s methodology, the anticipated roof-peak-to-roof-peak reduction will be approximately 32 feet. Plans submitted to the ARB at the 50% and 100% review stages will be measured in conformance with the methodology specified in the By-Law.

2. Lower the roof-peak elevation of each remaining tier of Mid-Rise Building 3 by approximately 11 feet from the elevation in the Permitted Plans. Because of the 33-foot reduction of the tallest portion of the Building described in section I(A)(1), additional vents or other utility equipment may need to be located in the roofs of the remaining tiers. SRA reserves the right to screen such devices for aesthetic and noise-abatement purposes. An example of a screening detail is illustrated in Ex. A-1.
  3. SRA and the Plaintiffs will submit a joint letter, included as Exhibit F, to the ARB requesting that the ARB require construction of the northwesterly facing side of Building 3 in a manner that varies the location of the external wall surface. The Permitted Plans already provide for bay windows and porches off the bays which will vary the Building’s façade. SRA and the Plaintiffs will request ARB approval to include additional adjustments in the Building’s side in order to increase the irregularity of the façade. The additional modifications are not shown in the Exhibits since they require additional planning and coordination between SRA’s architects and engineers. Any such modifications will require the approval of the ARB at the 50% and 100% review stages. All parties mutually agree that the review and approval of the building façade is the jurisdiction of the ARB and hereby agree to submit to the ARB’s final judgment on this subject in its review and approval of the project plans.
  4. Reduce the footprint of the southeasterly wing of Mid-Rise Building 3 as indicated in Exhibit E, and modify the building height as set forth in Exhibit B.
  5. Change the northwesterly corner of Mid-Rise Building 3 from an “in-corner” to an “out-corner” as indicated in Exs. B and E.
- B. Mid-Rise Building 4 Reduction: Within the approximate lateral and vertical envelope of the Permitted Plans, SRA shall:
1. Lower the tallest point of the building, as measured from the top of the mechanical equipment, approximately 33 feet. This reduction is illustrated in Exhibits (“Ex.”) A-2 and B. As indicated in Ex. A-2, the Permitted Plans allow the top of the mechanical equipment to reach an elevation of approximately 94 feet with the roof peak at 90 feet. After the reduction, the top of the mechanical equipment will be at an elevation of approximately 61 feet and the roof peak will be at 58 feet. The Town of Arlington Zoning By-Law (“By-Law”) does not include rooftop mechanical equipment in determining height elevations, nor does

it include screening in the calculation. Instead, the By-Law measures to the roof peak. Pursuant to the By-Law's methodology, the anticipated roof-peak-to-roof-peak reduction will be approximately 32 feet. Plans submitted to the ARB at the 50% and 100% review stages will be measured in conformance with the methodology specified in the By-Law.

2. Lower the roof peak elevation of each remaining tier of Mid-Rise Building 4 by approximately 11 feet from the elevation in the Permitted Plans. Because of the 33-foot reduction of the tallest portion of the Building described in section I(B)(1), additional vents or other utility equipment may need to be located in the roofs of the remaining tiers. SRA reserves the right to screen such devices for aesthetic and noise-abatement purposes. An example of a screening detail is illustrated in Ex. A-2.
  3. Reduce the footprint of the southeasterly wing of Mid-Rise Building 4 as indicated in Exs. B and E, and modify the building height as set forth in Exhibit B..
  4. Change the northeasterly corner of Mid-Rise Building 4 from an "in-corner" to an "out-corner" as indicated in Exs. B and E.
- C. Townhome Group B Reduction: Within the approximate lateral and vertical envelope of the Permitted Plans, SRA shall:
1. Revise the footprint of Townhome Cluster B-2 in accordance with the reduced footprint illustrated in Exs. B and C-3.
  2. Revise the footprint of Townhome Cluster B-1 in accordance with the reduced footprint illustrated in Exs. B and C-2.
  3. Revise the height and roof dimensions of Townhome Clusters B-1 and B-2 by revising the height and roof dimensions in accordance with the cross-sections illustrated in Exs. C-2 and C-3.
- D. Townhome Group A Reduction: Within the approximate lateral and vertical envelope of the Permitted Plans, SRA shall:
1. Revise the footprint of Townhome Group A as illustrated in Ex. C-1.
  2. Revise the height and roof dimensions of Townhome Group A by revising the height and roof dimensions in accordance with the cross-section illustrated in Ex. C-1.
- E. Overall Size Reduction: Within the approximate lateral and vertical envelope of the Permitted Plans, SRA shall construct the Project so that the total residential unit count for the entire Project does not exceed 200 units. The overall

configuration, number, and placement of units within any of the Project's Buildings shall be at the sole discretion of SRA and its architects and engineers, provided that it shall be consistent with this Agreement. The Townhome units will not exceed the figures set forth in Ex. G.

- II. Modification of Surface Parking and Circulation: Within the scope of the Project's Permitted Plans, SRA shall:
  - A. Relocate the vehicular access to the Townhome Cluster B parking area to a location between the northeasterly edge of Townhome Cluster B and the west edge of Townhome Cluster A, as indicated on Ex. D.
  - B. Landscape and plant the eliminated driveway area resulting from the modification described in paragraph II(A). The landscaping will preserve the cluster of trees as illustrated in Ex. D. Temporary fencing shall also be installed to protect the existing trees behind 165 Brattle Street.
- III. Preservation of Open Space and Buffers: Within the scope of the Project's Permitted Plans, SRA shall:
  - A. Subject to the tree replacement procedures of the Special Permit requiring ARB and Land Trust notification, preserve and maintain 100% of the current wooded areas and vegetative buffer along the abutting properties on Brattle Street, including the area abutting 165 Brattle Street and 133 Brattle Street, during and after construction, in accordance with the Open Space Plan and Conservation Easement negotiated with the Arlington Land Trust and the Symmes Neighborhood Advisory Committee ("SNAC"). Should trees need to be removed for fencing and/or construction purposes, SRA shall follow the tree replacement procedures specified in the Special Permit (Special Condition # 10), which references the Conservation Restriction and Public Access Easement. Modifications to the tree replacement procedures for the area specified in this settlement term shall require agreement by all parties involved.
  - B. Install post-construction fencing in accordance with the landscape plan in the Project approvals as indicated in Exhibit D. Any modifications to the final fencing layout shall be mutually agreed to by all parties involved.
  - C. Situate all dumpster locations so that the access points are facing away from the Project's abutting property owners. All dumpster locations shall have landscape screening as indicated in Exhibit D.
- IV. Noise Abatement and Modeling: Within the scope of the Project's Permitted Plans, SRA shall:

- A. Construct fencing and other noise abatement fixtures and equipment so that they are consistent with the Neighborhood Protection Plan ("NPP"), which is part of the Permitted Plans.
- B. Hire a noise engineer who is board certified by the Institute of Noise Control Engineering. After the execution of this Agreement, the noise engineer shall forthwith conduct a noise analysis of the Project. The analysis shall use as its baseline a modeling of the Symmes Hospital as it functioned during its most recent occupancy by the HealthSouth / Lahey Partnership, and shall assume fully operational hospital systems. The analysis shall methodically examine a period of time determined by the noise engineer to adequately assess the sound from the Project site during all periods of the day. The noise engineer shall adhere to the relevant standards of sound analysis and noise measurement established by the American National Standards Institute. SRA ensures that the final design of HVAC equipment will be consistent with the Town of Arlington Noise By-Law and the Massachusetts building and environmental codes (i.e. 310 CMR 7.10 : Noise). Any necessary noise attenuation measures will be implemented to achieve this compliance.
- V. Site Work: Within the scope of the Project's Permitted Plans, SRA shall complete site work for the Medical Office Building ("MOB") garage, which is subject to a separate special permit and not the Project's Special Permit, in conjunction with grading operations before or during the first phase of residential construction in order to diminish any impacts in the neighborhood, in particular any impacts at Vista Circle.
- VI. Legal Fees: SRA will reimburse Lusk's legal fees in an amount not to exceed \$17,000. SRA will reimburse the other Plaintiffs' legal fees in an amount not to exceed an aggregate of \$17,000. The Plaintiffs shall submit documentation of their legal fees to SRA. Payment of legal fees shall be made within 60 days of the filing of the Stipulations of Dismissal described in section VIII of this Agreement.
- VII. Conditions Precedent: The binding effect of the Terms of this Agreement set forth in sections I through VI and in the attached Exhibits ("Terms") is unequivocally subject to and contingent upon full agreement between the ARB and SRA on the following conditions precedent:
  - A. A written determination by the ARB at an open meeting that the Terms (including, but not limited to, the reductions in height, footprint and unit count and the modification of the internal roadway) do not require: an amendment to the Special Permit; a new Special Permit; the filing of an appealable determination with the Arlington Town Clerk; or any appealable permit as a result of modifications to the Permitted Plans.

- B. The full execution of all amendments to the Project's Land Disposition Agreement that SRA determines to be necessary to maintain the Project's economic feasibility in lieu of its reduced size.

Should any one of the conditions precedent not be agreed upon by the ARB, or not be waived by SRA at SRA's sole discretion, this Agreement shall become null and void.

VIII. Termination of Litigation: In consideration of the reduction in the Project size and SRA's agreement to the Terms set forth above, the Plaintiffs shall:

- A. Terminate the Lusk Appeal by filing in the Land Court a Stipulation of Dismissal in accordance with Rule 41(a)(1)(ii) of the Massachusetts Rules of Civil Procedures. The Stipulation of Dismissal shall be with prejudice, and without costs or further rights of appeal.
- B. Terminate the Jackmaugh Appeal by filing in the Middlesex Superior Court a Stipulation of Dismissal in accordance with Rule 41(a)(1)(ii) of the Massachusetts Rules of Civil Procedure. The Stipulation of Dismissal shall be with prejudice, and without costs or further rights of appeal.
- C. Support any determination by the ARB described in section VII(A) of this Agreement and further support SRA's view that there shall not be any court-imposed changes in the Project or in the permitting of the Project.

The filing of the Stipulations of Dismissal described in sections VIII(A) and VIII(B) shall occur forthwith after the later of (i) any determination by the ARB described in section VII(A) of this Agreement; (ii) the execution of amendments to the Land Disposition Agreement described in section VII(B) of this Agreement; (iii) the execution of this Agreement by the Plaintiffs; or (iv) the recording of the Special Permit along with notice of this Agreement and the finding of the ARB concerning this Agreement's Terms.

IX. Time is of the Essence: SRA and the Plaintiffs agree that it is important to reach a settlement promptly and move the Project forward. Therefore, all parties agree to use their best efforts to achieve the following tasks in the timeframe outlined below:

- A. SRA and the Plaintiffs will execute this Agreement no later than 3 p.m. on Wednesday, March 29, 2006. If this Agreement shall not be executed by the Plaintiffs at or before that time, there shall be no Agreement and any promises, consideration or conditions set forth herein shall be null and void.
- B. The ARB shall make the determination set forth in section VII(A) of this Agreement no later than Wednesday, March 29, 2006. SRA may waive this time limit in its sole discretion.

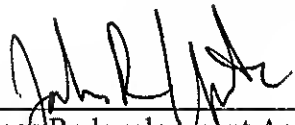
- C. SRA shall present the necessary amendments to the Land Disposition Agreement to the ARB no later than Wednesday, March 29, 2006.
- D. The ARB shall approve the necessary amendments to the Land Disposition Agreement, in a form acceptable to SRA, no later than Wednesday, March 29, 2006. SRA may waive this time limit in its sole discretion.
- E. SRA, the Plaintiffs, and any other party to the Lusk Appeal and the Jackmaugh Appeal shall file the Stipulations of Dismissal described in section VIII of this Agreement no later than the second business day after the last-occurring event described in the final paragraph of section VIII of this Agreement.
- X. Governing Law. This Agreement shall be governed by and interpreted in accordance with the internal laws of the Commonwealth of Massachusetts.
- XI. Entire Agreement. This Agreement constitutes and represents the entire agreement between SRA and the Plaintiffs with respect to the matters referred to herein and may not be modified except by a writing signed by both SRA and the Plaintiffs.
- XI. Severability. The illegality, unenforceability or invalidity of any section, subsection, term, provision, or part of this Agreement, for any reason, shall not affect the enforceability or validity of the remainder of this Agreement.
- XII. Headings. Section headings are not to be considered part of this Agreement, are included solely for convenience, and are not intended to be full or accurate descriptions of the contents of any section or subsection.
- XIII. Execution in Counterparts. This Agreement may be executed in counterparts, and each counterpart shall be effective as if it were an original of this Agreement. In making proof of this Agreement it shall not be necessary to produce or account for more than one such fully executed counterpart.
- XIV. Amendment and Waiver. No supplement, modification or waiver of this Agreement, or any part hereof or thereof shall be binding unless executed in writing by the party against which enforcement of such supplement, modification or waiver is sought. Neither the failure nor any delay by any party in exercising any right, power or privilege under this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.
- XV. Affiliates, Successors, and Assigns. This Agreement shall both benefit and be binding upon each of SRA, Sarah Lusk, Greg Jackmaugh, Lorelei Kolegue, Sandi Bourgeois, and Andrew Fischer, and their respective affiliates, successors, and assigns.
- XVI. Advice of Counsel and Authority. The parties to this Agreement acknowledge that each of them has been represented by and advised by counsel in the making

of this Agreement. Consequently, any ambiguity herein shall not be construed against the drafter of this Agreement. Each party to this Agreement represents and warrants that he or she is fully authorized to enter into this Agreement and does so as his or her free act and deed.

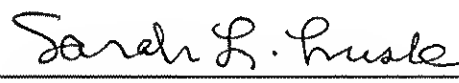
XVII. Sarah Lusk represents a group of neighborhood residents who are interested in the Project and this Agreement. She represents, covenants, and warrants that she has the authority to bind each and every member of her group and hereby so binds them.

XVIII. Greg Jackmauh, Lorelei Kolegue, and Sandi Bourgeois represent and warrant that they have no other members of their group. Andrew Fischer has not been a named party to either the Lusk Appeal or the Jackmauh Appeal, but he represents and warrants that he is bound by this Agreement to the full extent that all other Plaintiffs are bound.

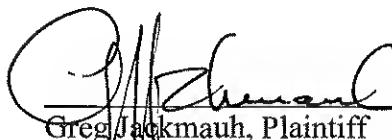
XIX. Except for claims or causes of action arising under this Agreement, the Plaintiffs hereby release each and every claim or cause of action they have against the Project, the Special Permit or SRA, and SRA hereby releases each and every claim it has against the Plaintiffs.

  
Symmes Redevelopment Associates, LLC  
By: Mr. Jake R. Upton  
Managing Director, SRA

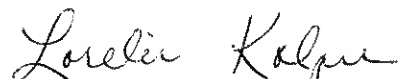
3/29/06  
Date

  
Sarah Lusk, Plaintiff  
165 Brattle Street, Arlington, MA

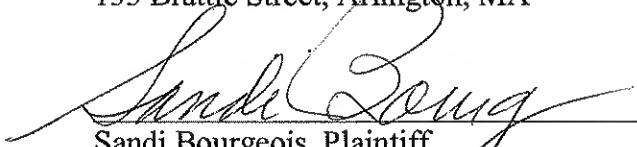
3/29/06  
Date

 3/29/06  
Greg Jackmauh, Plaintiff  
6 Hazel Terrace, Arlington, MA

\_\_\_\_\_  
Date

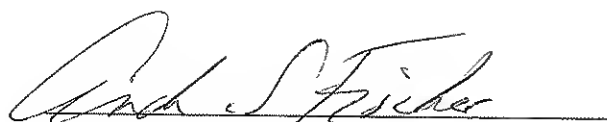
  
Lorelei Kolegue, Plaintiff  
133 Brattle Street, Arlington, MA

3/29/06  
Date

  
Sandi Bourgeois, Plaintiff  
69 Woodside Lane, Arlington, MA

3/29/06  
Date





Andrew Fischer, Plaintiff  
25 Lombard Road, Arlington, MA

3/29/06  
Date

**EXHIBIT F**

Letter to Arlington Redevelopment Board  
Concerning Request for Varied Façade on Building 3

Chairman  
Arlington Redevelopment Board  
Town of Arlington  
Arlington, Massachusetts

**Re: Symmes Hospital Site  
Residential Development**

Dear Chairman:

Symmes Redevelopment Associates, LLC ("SRA"), Sarah Lusk, Greg Jackmauh, Lorelei Kolegue, and Sandi Bourgeois are submitting this letter in order to request the Board's attention to the final design for the northwest façade of Building 3 in the referenced project.

As initially submitted, the northwest façade of Building 3 includes bay windows and porches off the bays. While that design will provide some variation, we believe that additional variations in the straight-line segments of the façade will improve the overall attractiveness of the final design. Together the undersigned hereby request the Board to require SRA to include design modifications to vary Building 3's northwest facade by including a 'pop-in' or 'pop-out' on at least a portion of the façade by at least 2 feet.

All parties mutually agree that the review and approval of the building façade is the jurisdiction of the Board and hereby agree to submit to the Board's final judgment on this subject in its review and approval of the project plans.

Sincerely yours,

\_\_\_\_\_  
Jake R. Upton  
Managing Director, SRA

Sarah L. Lusk 3/29/06  
Sarah Lusk  
165 Brattle Street

Greg Jackmauh 3/29/06  
Greg Jackmauh  
6 Hazel Terrace

Lorelei Kolegue 3/29/06  
Lorelei Kolegue  
133 Brattle Street

Sandi Bourgeois 3/29/06  
Sandi Bourgeois  
69 Woodside Lane

Andrew S. Fischer 3/29/06  
Andrew S. Fischer  
25 Lombard Road

**Exhibit G**

Townhome densities will be designed with a not-to-exceed density as follows:

<u>Bld.</u>	<u>Unit #</u>	<u>Sq. Footage</u>
A	4	8,070
B	8	16,140
C	15	26,000
D	7	14,500
E	24	40,000